

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee

v

LEON JUNIOR HARRIS,

Defendant-Appellant.

UNPUBLISHED

January 4, 2011

No. 287169

Wayne Circuit Court

LC No. 08-002516-FC

Before: DONOFRIO, P.J., and CAVANAGH and FITZGERALD, JJ.

PER CURIAM.

Defendant appeals as of right his convictions following a jury trial of assault with intent to murder, MCL 750.83, and possession of a firearm during the commission of a felony, MCL 750.227b, for shooting Louis Hence in the back.¹ Defendant was sentenced to a two-year prison term on the felony-firearm conviction, and to 144 to 360 months' imprisonment for the assault with intent to murder conviction, to be served consecutively. We affirm.

Defendant first contends the evidence was insufficient to convict him of assault with intent to murder and felony-firearm because the evidence established that he acted in self-defense and defense of others. We disagree.

An appellate court reviews de novo a challenge to the sufficiency of evidence. *People v Hawkins*, 245 Mich App 439, 457; 628 NW2d 105 (2001). To determine whether sufficient evidence was presented, this Court views the evidence in a light most favorable to the prosecution and determines whether a rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v McRunels*, 237 Mich App 168, 181; 603 NW2d 95 (1999). This Court will not interfere with the trier of fact's role of determining the credibility of witnesses. *People v Wolfe*, 440 Mich 508, 516; 489 NW2d 748, amended in part 441 Mich 1201 (1992). It is for the trier of fact, not the appellate court, to determine what inferences may be fairly drawn from the evidence and to determine the weight to be accorded those inferences. *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002).

¹ Defendant was acquitted of first-degree murder, MCL 750.316, for the killing of Louis' cousin, Rico Hence.

But an appellate court does review de novo questions of law, such as whether common law affirmative defenses are available for a statutory crime and, if so, where the burden of proof lies. *People v Dupree*, 486 Mich 693, 702; 788 NW2d 399 (2010).

To convict a defendant of assault with intent to murder, the prosecutor must prove the following three elements: “(1) an assault, (2) with an actual intent to kill, (3) which, if successful, would make the killing murder.” *McRunels*, 237 Mich App at 181; see, also, *People v Vinson*, 93 Mich App 483, 485; 287 NW2d 274 (1979). Assault with intent to murder is a specific intent crime. *People v Triplett*, 105 Mich App 182, 197; 306 NW2d 442 (1981). Circumstantial evidence and the reasonable inferences that arise from such evidence can constitute satisfactory proof of the elements of the crime. *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999). Because of the difficulty in proving an actor’s state of mind, minimal circumstantial evidence is sufficient. *McRunels*, 237 Mich App at 181. And even when relying on circumstantial evidence, “the prosecution need not negate every reasonable theory consistent with the defendant’s innocence, but need merely introduce evidence sufficient to convince a reasonable jury in the face of whatever contradictory evidence the defendant may provide.” *Hardiman*, 466 Mich at 423-424, quoting *People v Konrad*, 449 Mich 263, 273 n 6; 536 NW2d 517 (1995).

Viewed in a light most favorable to the prosecution, the evidence established that Louis Hence was shot in the back after he either fled from the home where defendant was struggling with Rico Hence over possession of a handgun or was chasing after a third man who had been in the home. After being shot, Louis looked toward the house and saw a person wearing dark clothing jump off the porch and run away. It was reasonable for the jury to infer that the person was defendant and that he had shot Louis because defendant and Rico were the only people in the house just seconds before the shooting and because Rico was apparently killed during the struggle over the gun. Investigators recovered four shell casings inside the home and two shell casings outside the home that came from the same handgun. It was reasonable to infer that the four casings found inside the home were from the handgun that defendant wrested away from Rico. Since those casings matched the two found outside the home, it was also reasonable to conclude that defendant fired those bullets as well. Defendant’s conduct and the circumstances surrounding the shooting supported the inferences that he had possession of the handgun and that he fired it at Louis with the specific intent to kill. See *Carines*, 460 Mich at 757. The circumstantial evidence was more than minimal and demonstrated that defendant acted with the requisite intent. See *McRunels*, 237 Mich App at 181.

Defendant asserted a defense of others theory at trial, claiming that he shot Louis to prevent Louis from harming or killing another man. Viewing the evidence in a light most favorable to the prosecution, the jury was free to reject defendant’s claim of defense of others. Louis denied possessing a gun as he fled the house. Although the other man claimed Louis had fired shots at him, the only shell casings found in or around the house came from the handgun that must have been in defendant’s possession. The fact that the jury found the proofs insufficient to establish beyond a reasonable doubt that defendant killed Rico, or that he had acted in self-defense in doing so, did not render inconsistent the jury’s verdict that defendant committed assault with intent to murder as it pertained to Louis. A rational trier of fact could reasonably infer from the circumstantial evidence that the other man was not facing imminent

danger of death or the threat of great bodily harm from Louis. See *Hardiman*, 466 Mich at 423-424.

Defendant next argues that the trial court erred in instructing the jury to consider his flight as evidence of guilt. Defendant claims there was no evidence that he left the scene to evade prosecution. We disagree.

Issues of law arising from jury instructions are reviewed de novo on appeal, but a trial court's determination on whether the instruction was applicable to the facts of the case is reviewed for an abuse of discretion. *People v Gillis*, 474 Mich 105, 113; 712 NW2d 419 (2006). This Court also reviews jury instructions in their entirety to determine "if error requiring reversal occurred." *People v Aldrich*, 246 Mich App 101, 124; 631 NW2d 67 (2001). To give a particular instruction to a jury, it is necessary that there be evidence to support the instruction. *People v Johnson*, 171 Mich App 801, 804; 430 NW2d 828 (1988). Even if somewhat imperfect, instructions do not create error if they fairly presented the issues to be tried and sufficiently protected defendant's rights. *People v Clark*, 274 Mich App 248, 255-256; 732 NW2d 605 (2007).

In this case, there was evidence to support the trial court's "flight" instruction. See *Johnson*, 171 Mich App at 804. Louis testified that, immediately after he was shot, he turned and saw a man wearing dark clothing, presumably defendant based on the circumstantial evidence in the case, jumping off the back porch of the home and running away. That evidence also showed that Rico's body had been dragged from the home and removed from the property. His body was later discovered inside a car located 8 to 10 miles from the house. That defendant hurriedly left the scene, coupled with the inference that defendant (or someone acting on behalf of defendant) removed Rico's body from the scene and transported it to a different location, demonstrates a consciousness of guilt. See *Coleman*, 210 Mich App at 4. That defendant voluntarily turned himself in to police several days later does not negate this inference. Defendant may have initially fled the scene, then had second thoughts about the implications of his actions and turned himself in to police. Because the evidence supported the "flight" instruction, the jury's verdict should not be reversed on the basis of instructional error. See *Aldrich*, 246 Mich App at 124.

Finally, the trial court did not err in telling the jury that "[t]here's been some evidence that the defendant fled after *the crime was committed*." Contrary to what defendant claims, that statement did not necessarily suggest his guilt of the crime. In any event, the statement was technically correct because self-defense or defense of others does not transform the act itself into something less than a crime. In other words, the killing is still a crime; the law simply recognizes in the situation of self-defense or the defense of others that the killing may be justified or excused. See *People v Pegenau*, 447 Mich 278, 319-320; 523 NW2d 325 (1994).

Affirmed.

/s/ Pat M. Donofrio
/s/ Mark J. Cavanagh
/s/ E. Thomas Fitzgerald